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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In re

Case No. 19-30088 (DM)

PG&E CORPORATION,

Chapter 11

- and -

(Lead Case) (Jointly Administered)

PACIFIC GAS AND ELECTRIC  
COMPANY,

Debtors.

**RESPONSE AND POINTS AND  
AUTHORITIES IN OPPOSITION TO  
OBJECTION TO CLAIM #2090**

- ☐ Affects PG&E Corporation  
☐ Affects Pacific Gas and Electric Company  
☒ Affects both Debtors

**Date: July 12, 2022**

**Time: 10:00 a.m.**

**Place: (Tele/Videoconference Appearances  
Only)**

**United States Bankruptcy Court  
Courtroom 17, 16th Floor  
San Francisco, CA 94102**

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1 Amir Shahmirza, for himself and on behalf of Komir, Inc., (“Claimant”) makes the following  
2 response to Debtors’ Objection to Claim #2090<sup>1</sup> and submits the points and authorities set forth  
3 below.

4 **RESPONSE**

5 Claimant responds to the Objection to Claim as follows:

- 6 1. The Proof of Claim sufficiently identifies the claims being asserted, the relief being  
7 requested, and the identity of the parties in interest, including the authority of Amir  
8 Shahmirza to act as agent for and on behalf of Komir, Inc., to satisfy the requirements  
9 of 11 USC § 502, Rule 3007 of the Federal Rules of Bankruptcy Procedure, and Rule  
10 3007-1 of the Bankruptcy Local Rules for the Northern District of California  
11 concerning the filing of Proofs of Claim.
- 12 2. Alternatively, or additionally, the pleadings filed in the “Lawsuit” referenced in the  
13 Proof of Claim (the “Lawsuit”), and the conduct of the Debtors with respect to the  
14 Lawsuit and the pleadings, both before the commencement of the Bankruptcy Cases  
15 and during the claims filing period, establish an “informal claim” that satisfies the  
16 requirements for filing a Proof of Claim. In fact, prior to the filing of the Objection to  
17 Claim, the Debtors participated in a mediation regarding the substance of the Proof of  
18 Claim.
- 19 3. The controversy that is the subject of the Proof of Claim and the Objection was  
20 pending in a state court litigation commenced prior to the filing of the Petition  
21 initiating this Bankruptcy Case, the state court litigation (and the controversy) involve  
22 only issues of state law, and those matters can be litigated to conclusion in the state  
23 court action within a reasonable time. Accordingly, mandatory abstention is  
24 appropriate to allow the state court to adjudicate the state law matters. Alternatively,  
25 in the event that the Court does not determine that mandatory abstention is required,  
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<sup>1</sup> As filed on March 19, 2019, the Proof of Claim appears at Claim 65-1.

1 then permissive abstention or relief from stay would provide the appropriate means  
2 for disposition of the controversy.

- 3 4. Factual disputes exist with respect to the subject matter of the Claim such that the  
4 Objection cannot be adjudicated at an initial status conference; rather, the issues  
5 require consideration of extensive evidentiary matters including the physical aspects  
6 of the property, the chain of title, the interests conveyed or not, and expert testimony  
7 with respect to such matters, all of which is the customary work of the state court trial  
8 departments.

9 Based upon the foregoing, Claimant requests that the Court deny the Objection, exercise  
10 mandatory or permissive abstention, or establish a procedure to allow consideration for granting  
11 relief from stay to allow adjudication of the state law claims in the state court.

12 **POINTS AND AUTHORITIES**

13 In support of this Response to the Objection, Claimant provides the points and authorities  
14 below.

15 **I. THE PARTIES**

16 The Reorganized Debtors are the objecting parties.

17 The Reorganized Debtors are represented by both (a) Debtors' bankruptcy counsel, Keller  
18 Benvenuti Kim LLP and (b) Debtors' state court counsel of record in the "Lawsuit" (as stated in the  
19 Proof of Claim), ROVENS LAMB LLP.

20 The Claimant as to the substance of the Proof of Claim is Komir, Inc., whose interests as the  
21 owner of the subject property are stated in the Complaint which was filed to initiate the "Lawsuit"  
22 referenced in the Proof of Claim, such that the claims asserted in the Complaint form the basis of  
23 liability which is asserted in the Proof of Claim.

24 The claim was filed on behalf of Komir, Inc. in the name of Amir Shahmirza ("Shahmirza"),  
25 the sole shareholder, director, and officer of Komir, Inc., who, in those capacities, had, and has, the  
26 authority to act as agent for Komir, Inc. (Shahmirza and Komir, Inc., are referred to together as the

1 “Claimant”).

2 The Proof of Claim was filed by Matthew Mellen of the Mellen Law Firm. Mr. Mellen has  
3 become physically incapacitated and is not appearing on behalf of Claimant in opposing the  
4 Objection.

5 Cohen and Jacobson, LLP has filed its Notice of Appearance in this case, participated in the  
6 Mediation of the dispute, and appears in opposition to the Objection. Cohen and Jacobson, LLP has  
7 also substituted as counsel of record in the state court action, discussed below, in the place of the  
8 Mellen Law Firm.

## 9 **II. THE STATE COURT ACTION**

10 On November 18, 2018, Shahmirza and Komir, Inc., filed their Complaint initiating the  
11 “Lawsuit” entitled “*Amir Shahmirza, an individual, and Komir, Inc., a business entity, vs. PG&E, a*  
12 *business entity*” in the Superior Court of San Mateo County, California, as Case No. 18-CIV-060604  
13 (the “Lawsuit”). The Lawsuit asserts claims for trespass, and related causes of action, based upon  
14 PG&E’s unauthorized installation and maintenance of large transmission lines across the property  
15 located at 800 Walnut Street, San Bruno, CA, which property is in the general area of the  
16 southwesterly portion of the intersection of Highways 380 and 101, consisting of 96,441 square feet  
17 of land (the “Property”). The unsightly and obstructive transmission lines were installed by PG&E  
18 inexplicably and without any legal or other authority to do so, and constitute a continuing trespass.

19 The Complaint is attached as Exhibit A to the Declaration of Lawrence A. Jacobson in  
20 Support of Opposition to Objection to Claim (“Jacobson Declaration”) and is also attached as  
21 Exhibit A to the Declaration of Steven A. Lamb in Support of Reorganized Debtors’ Objection to  
22 Proof of Claim No. 2090 Filed by Amir Shahmirza.

23 The Complaint pleads the capacity of the parties and alleges affirmatively that Komir, Inc., is  
24 the owner of the subject property stating:

25 “4. Plaintiff KOMIR, INC. is, and at all times mentioned herein, a California Corporation  
26 located at 10 Rollins Road #217, Millbrae, CA 94030 doing some or part of its  
business in commercial real estate. Plaintiff KOMIR, INC. is an owner and beneficial  
interest holder of title of the property subject which is the subject of this lawsuit.

1 Plaintiff KOMIR, INC. is managed by Plaintiff AMIR SHAHMIRZA, an individual.”

2 On January 11, 2019, PG&E, by Rovens Lamb LLP, filed its Demurrer to Complaint and  
3 supporting pleadings including its Memorandum of Points and Authorities in Support of Demurrer  
4 (“Demurrer Points and Authorities”). The Demurrer is attached as Exhibit B to the Jacobson  
5 Declaration, and the Demurrer Points and Authorities is attached as Exhibit C to the Jacobson  
6 Declaration, by incorporated herein by this reference.

7 In the Demurrer Points and Authorities, PG&E argued as follows:

8 “According to the Complaint, KOMIR, INC. is the owner and beneficial interest holder and  
9 holds title to the Property. [Complaint at 1] 4.] Indeed, the Grant Deed referenced in the  
10 Complaint [See Complaint at ¶ 9], recorded on December 18, 2000, clearly reflects that title is  
held in the name of KOMIR, INC. The owner of title in fee holds the property rights of the  
owner, including those of bringing an action for trespass. See Cal.Civ. Code §829.”

11 Based upon this argument, PG&E argued that the Complaint should be dismissed as to  
12 Shahmirza, individually. Thus, PG&E not only recognized in the Lawsuit that Komir, Inc. had  
13 alleged its interest as owner of the property, PG&E adopted that position as a basis of its argument in  
14 support of its Demurrer indicating that Komir, Inc. was “clearly” the owner of the property.

15 Under California Code of Civil Procedure § 472(a) a plaintiff may amend a Complaint once as  
16 a matter of right. Under that provision, Shahmirza and Komir, Inc., held, and still hold, the right to  
17 amend the Complaint to resolve issues raised by Demurrer.

18 On January 29, 2019, Debtors filed their Petitions initiating these Bankruptcy cases.

19 On January 30, 2019, Debtors, by Rovens Lamb, LLP, filed PG&E’s Notice of Bankruptcy  
20 Filing and Imposition of Automatic Stay in the Lawsuit, copy attached as Exhibit D to the Jacobson  
21 Declaration and incorporated herein by this reference.

22 On February 25, 2019, Debtors, by Rovens Lamb, LLP, filed their Notice of Withdrawal of  
23 Demurrer referring therein to the Notice of Bankruptcy Filing. A copy of the Notice of Withdrawal of  
24 Demurrer is attached as Exhibit E to the Jacobson Declaration and incorporated herein by this  
25 reference.

26 On March 19, 2019, i.e., within less than a month after the Debtors filed their Notice of



1 Withdrawal of Demurrer, the Claimant filed the Proof of Claim, copy attached as Exhibit F and  
2 incorporated herein by this reference.

3 By their Notice of Bankruptcy Filing and by their Withdrawal of Demurrer, Debtors  
4 acknowledged, within approximately one (1) month after the commencement of their Bankruptcy  
5 cases, possession of the pleadings in the Lawsuit, knowledge of the claims asserted in the Lawsuit,  
6 and possession of the Complaint that asserted the claims against the Debtors, including the allegations  
7 concerning Komir, Inc.'s ownership of the Property and Shahmirza's management of Komir, Inc.

8 On April 15, 2019, i.e., after the Claimant's filing of the Proof of Claim, the Debtors filed  
9 their Statement of Financial Affairs stating therein the pendency of the Lawsuit and its status as  
10 "open/pending." See discussion below.

11 Effective January 1, 2020, the Superior Court of San Mateo County adopted a single judge  
12 assignment system whereby civil actions are assigned to a department for all proceedings to occur in  
13 the case.

14 Pursuant to the implementation of a single judge assignment system, the Lawsuit was assigned  
15 to the Hon. Nancy Fineman for all purposes as indicated in the Notice of Assignment for All Purposes  
16 dated December 4, 2020, copy attached as Exhibit G to the Jacobson Declaration and incorporated  
17 herein by this reference.

18 Judge Fineman sits as the judge assigned to the Lawsuit for all purposes and is available to  
19 adjudicate the controversies.

20 The full Docket in the Lawsuit is attached as Exhibit H and incorporated herein by this  
21 reference.

### 22 **III. THE STANDARD OF PLEADING**

23 The Federal Court notice pleading standard is contained in Rule 8 of the Federal Rules of  
24 Civil Procedure.

25 FRCP Rule 8 requires that a pleader asserting a claim plead a "a short and plain statement of  
26 the claim showing that the pleader is entitled to relief".

1 Similarly, Rule 3001(a) of the Rules of Bankruptcy Procedure requires on a “written statement  
2 setting forth a creditor’s claim.”

3 Consistent with FRCP Rule 8 and Rule 3001(a), the Official Form of Proof of Claim, in  
4 Section 8 concerning the substance of the claim, presents the following simple question:

5 **“8. What is the basis of the claim?”**

6 Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful  
7 death, or credit card.

8 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule  
9 3001(c).”

10 The cases that have interpreted the requirements for pleading such statements of the basis of  
11 claims express an extremely liberal test of sufficiency.

12 In *Hishon v King & Spaulding*, 467 U.S. 69 (1984), the Court expressed the rule regarding the  
13 sufficiency of pleading of claims as follows:

14 “A court may dismiss a complaint only if it is clear that no relief could be granted under any  
15 set of facts that could be proved consistent with the allegations.”

16 Similarly, in *Ancata v. Prison Health Services, Inc.*, 769 F.2d 700 (11<sup>th</sup> Cir.,1985) expressed  
17 the standard as follows:

18 “The threshold of sufficiency that a complaint must meet to survive a motion to dismiss for  
19 failure to state a claim is, as we have stated previously, ‘exceedingly low’.”

20 In *Bianchi v State Farm*, 1998 U.S. Dist. LEXIS 22976 (N.D.Cal. 1998), the Court expressed  
21 the same perspective:

22 “The threshold of sufficiency that a complaint must meet to survive a motion to dismiss is  
23 exceedingly low.”

24 In the pending matter, the Proof of Claim refers to the “Lawsuit for trespass and related  
25 claims” as presenting the substance of the claims against the Debtors.

26 The Debtors had full knowledge of all the claims in the Lawsuit prior to and immediately  
upon the filing of the Petitions initiating these cases.

Measured against the standard of sufficiency in the pleading of claims, the Proof of Claim

1 demonstrates clear and adequate notice to the Debtors of the claims of Claimant.

#### 2 **IV. SUFFICIENCY OF INFORMAL CLAIM**

3 The courts in the Ninth Circuit have consistently held that even informal notice of a claim is  
4 sufficient to establish a valid claim. Those cases hold that informal notice is valid if the form of the  
5 claim is enough to inform the debtor or trustee of the nature of a claim and the remedy sought by the  
6 aggrieved party – if so, the informal claim suffices as a “Proof of Claim” even without the filing of a  
7 claim.

8 One leading secondary source describes this form of notice as follows:

9 **“Informal” proofs of claim:** The Ninth Circuit has long recognized the informal proof of  
10 claim doctrine whereby claims not filed in the proof of claim format have been deemed valid.  
(Sometimes the claim has not even been filed with the bankruptcy court.) [*In re Fish* (9th Cir.  
11 BAP 2011) 456 BR 413, 417 (collecting cases); *In re Sambo's Restaurants, Inc.* (9th Cir.  
12 1985) 754 F2d 811, 815-817; *In re Edelman* (9th Cir. BAP 1999) 237 BR 146, 154-155—but  
phone calls to the U.S. Trustee advising it of state court complaint did not qualify as informal  
proof of claim]” *Rutter Group, California Practice Guide: Bankruptcy*, 17:1137 (2022)

13 In *Sambos, supra*, the Court allowed a Complaint that was filed in violation of the automatic  
14 stay to constitute a valid “informal” Proof of Claim. The Court observed that the Complaint, though  
15 “void” as an act to actually commence an action, provided the Trustee with notice of the bases of the  
16 claim and the relief sought.

17 In its conclusion, the Ninth Circuit Court of Appeals stated:

18 “In the absence of prejudice to an opposing party, the bankruptcy courts, as courts of equity,  
19 should freely allow amendments to proofs of claim that relate back to the filing date of the  
informal claim when the purpose is to cure a defect in the claim as filed or to describe the  
20 claim with greater particularity. *See, e.g., Waits v. Weller*, 653 F.2d 1288, 1290 (9th Cir.  
1981). Wheeler is not seeking to introduce a new claim in disguise, and Sambo's has pointed  
21 out no actual prejudice that would result from allowing the amendment. Thus, the bankruptcy  
court abused its discretion in disallowing the amendment in this case.”

22 In the pending matter, the Debtors were sufficiently informed about the claim prior to the  
23 commencement of the case by the filing of the Lawsuit; appeared in the Lawsuit; filed a Demurrer in  
24 the Lawsuit challenging the Complaint, and in the moving papers acknowledged Komir, Inc., as the  
25 owner of the property at issue; were sufficiently informed about the claim immediately after the filing  
26 of the Bankruptcy Cases to notify the plaintiffs (Shahmirza and Komir, Inc.) and the San Mateo

1 County Superior Court that Plaintiffs could not proceed with the Lawsuit due to the Bankruptcy  
2 Cases; the Proof of Claim refers the Lawsuit; and the Objection to Claim itself actually attaches the  
3 Complaint as an exhibit.

4 Moreover, Debtors further concede their knowledge of the claim in their Statement of  
5 Financial Affairs which identifies the Lawsuit by name, case number, Court location; states that the  
6 Lawsuit involves a “Property Matter”; and notes that the matter is “Open/Pending.” Doc. No. 1460-3,  
7 Pg. 213, copy attached as Exhibit I and incorporated herein by this reference.

8 Based upon the above facts and authorities, this Court should recognize the pleadings in the  
9 Lawsuit as constituting a valid “informal Proof of Claim” sufficient unto itself, and/or as  
10 supplementing the Proof of Claim as filed, and/or allow amendment to the Proof of Claim as filed as  
11 the Court may deem appropriate (including without limitation to identify Komir, Inc. as the owner of  
12 the Property).

13 **V. SHAHMIRZA AS AUTHORIZED AGENT OF KOMIR, INC.**

14 As the sole shareholder, director, and officer, Shahmirza was, and is, the person authorized to  
15 act as the agent and representative of Komir, Inc. (including as to the filing of the Proof of Claim).

16 An agent may file a Proof of Claim on behalf of its principal, and no expressed authority or  
17 documentation is required to authorize such filing.

18 *Rutter Group, California Practice Guide: Bankruptcy*, at Sections 17:1150 through 17:1150.3,  
19 and Section 1151, discusses the authorization of an agent to file a Proof of Claim on behalf of the  
20 principal as follows:

21 “[17:1150] **Creditor:** Any creditor may file a proof of claim. [11 USC § 501(a); FRBP  
22 3003(c)(1) (Chapter 11 cases)]

23 [17:1150.1] **Creditor's agent:** A proof of claim may also be executed and filed by the  
creditor's authorized agent. [FRBP 3001(b)] (1)

24 [17:1150.2] **Formal power of attorney not required:** No formal power of attorney is  
25 required to permit a creditor's authorized agent to file a proof of claim. [FRBP  
9010(c)—requiring power of attorney form for creditors' agents “for any purpose *other than*  
26 the execution and filing of a proof of claim” (emphasis added)]

[17:1150.3] **Express authorization “to file proof of claim” not required:** Rule 3001(b) does

1 not require a principal to expressly authorize its agent to file a proof of claim on its behalf. A  
2 principal's authorization for the agent to act on its behalf in the debtor's bankruptcy case  
3 necessarily includes authorization to file a proof of claim; the principal need not expressly  
4 state "you may file a proof of claim." [*In re Palmdale Hills Property, LLC* (9th Cir. BAP  
5 2011) 457 BR 29, 50]

6 [17:1151] **Equity security holder:** An equity security holder may file a proof of interest. [11  
7 USC § 501(a)]"

8 Pursuant to these authorities, Shahmirza was authorized to file the Proof of Claim in his name  
9 as agent for Komir, Inc., with the agency and authorization particularly appropriate in view of  
10 Shahmirza and Komir, Inc., being co-plaintiffs in the Lawsuit in which the Complaint alleges the  
11 agency capacities.

## 12 **VI. PRESUMPTION OF VALIDITY**

13 Overlaying all of the concepts discussed above is the presumption that the Proof of Claim is  
14 *prima facie* valid.

15 The parties do not dispute this presumption.

16 The Debtors acknowledge in their Objection that the Proof of Claim is presumed to be valid  
17 stating "A filed proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C.  
18 § 502(a)." (Objection, 6:1-2)

19 The Debtors argue, however, that they have presented such "facts tending to defeat the claim  
20 by probative force equal to that of the allegations of the proofs of claim themselves," that the burden  
21 of proof shifted to the Claimant.

22 The Debtors have not, however, presented any such compelling probative facts.

23 The only "fact" that the Debtors argue in support of their Objection is that Komir, Inc., is the  
24 owner of the Property.

25 Ironically, as noted above, in support of their Objection the Debtors presented to the Court the  
26 state court Complaint in the Lawsuit – demonstrating that the Debtors had in their possession, and  
acted upon, both immediately prior to, and immediately subsequent to, the filing of the Petitions  
initiating the Bankruptcy Cases.

1 The Debtors knew throughout the claims filing period that Komir, Inc., was the owner of the  
2 Property and that Shahmirza was the sole shareholder, director and officer of Komir, Inc., and was its  
3 agent acting on its behalf.

4 Accordingly, when the Debtors reviewed the Proof of Claim that recited the basis of the claim  
5 as the “Lawsuit” that they knew and understood that Komir, Inc., had asserted, and was asserting, its  
6 ownership of the Property and the Debtors’ violations of its rights with respect to the Property.  
7 Indeed, Debtors, Komir, and Shahmirza engaged in a substantive mediation regarding the claims  
8 alleged in the Complaint.

9 The Debtors have produced no facts that could operate to shift the burden of proof or avoid  
10 the presumption of validity.

#### 11 **VII. ABSTENTION**

12 The operative facts with respect to this Court’s abstaining from acting as the trial court for the  
13 claims in the Lawsuit include the following:

- 14 1. The Lawsuit was filed prior to the commencement of the Bankruptcy Cases;
- 15 2. The claims in the Lawsuit are based solely and exclusively upon state law;
- 16 3. Stated differently, recovery in the Lawsuit does not depend upon the application of any  
17 Bankruptcy law, or any other federal law;
- 18 4. The Lawsuit has been assigned to a Superior Court judge, the Hon. Nancy Fineman,  
19 for all purposes, and can be timely adjudicated before her.
- 20 5. Resolution of the Lawsuit is not necessary for the confirmation of Debtors’ Chapter 11  
21 Plan, which has already occurred, and is not otherwise necessary for the administration  
22 of the estate.

23 The Debtors contend that the proceeding on the Objection is a “core” proceeding pursuant to  
24 28 USC §157(b) that refers to allowance and disallowance of claims as core proceedings.

25 The Lawsuit to be adjudicated is not, however, a core proceeding. Rather, the Lawsuit exists  
26 totally independently of the Bankruptcy Cases and, rather than depending on Bankruptcy Law or

1 facilitating reorganization, the trial of the Lawsuit would constitute only an unnecessary burden on  
2 this Court.

3 The doctrines of mandatory and discretionary abstention under 28 USC §1334 provide the  
4 mechanism to allocate the jurisdiction, and the venue for exercise of jurisdiction, regarding claims  
5 between the estate and third parties.

6 The opinion in *Turrin v Ferrin*, 70 B.R. 486 (Bankr. Montana, 1987) expresses the concepts  
7 and distinctions as follows:

8 “Abstention on the other hand, is different in a legal sense from jurisdiction. *In re Elegant*  
9 *Concepts, Inc.*, 61 B.R. 723, 729 (Bankr. E.D. N.Y. 1986) states:

10 ‘The fact that a matter may be a core proceeding does not preclude abstention where  
11 abstention is otherwise appropriate. Equally, that a matter is non-core does not mandate  
12 abstention. To put it another way, 28 U.S.C. § 1334 mediates between the state and federal  
13 courts, sitting in bankruptcy; 28 U.S.C. § 157 demarcates the area of responsibility between  
14 the district and bankruptcy judges. Abstention relates to the entire federal jurisdiction, core  
15 and non-core.’

16 Mandatory abstention as distinguished from discretionary, however, applies only in non-core  
17 proceedings, while discretionary abstention applies to both core and non-core matters. *In re*  
18 *Harbour*, 60 B.R. 370 (Bankr. W.D. Va. 1985).”

19 In *Turrin*, the Court articulated the requirements for mandatory abstention as follows:

20 “As to mandatory abstention, which is sought in this case, there are five requirements which  
21 must be met to trigger application of 1334(c)(2), namely, (1) the filing of a timely motion; (2)  
22 a proceeding based on state law; (3) a proceeding related to a case under Title 11, but not  
23 arising under or arising in a case under Title 11; (4) a proceeding which could not have been  
24 brought in federal court absent the bankruptcy proceeding [for example, a proceeding based  
25 upon diversity of citizenship negates abstention, *Macon Prestressed Concrete Co. v. Duke*, 46  
26 B.R. 727 (D.C. Ga. 1985)], and (5) the proceeding must be one which is presently pending at  
the date of the Order of Relief and can be timely adjudicated in state court.”

All five factors exist in the pending matter:

1. This hearing is a timely opportunity to review the issues of jurisdiction and abstention  
as one of the purposes of the Status Conference is to determine future proceedings;
2. The Lawsuit is based entirely on state law;
3. The Lawsuit is related to the Bankruptcy Cases but does not arising in the case or  
under Title 11;
4. The Lawsuit could not have been brought in Federal Court except for the pendency of



1 the Bankruptcy cases; and

2 5. The Lawsuit was pending at the commencement of the Bankruptcy Cases and can be  
3 timely adjudicated before Judge Fineman.

4 Accordingly, the exercise of mandatory jurisdiction would be appropriate.

5 In *In re Texaco, Inc.*, 77 B.R. 433, 434 (Bankr. S.D.N.Y.) the court explained the concept of  
6 discretionary abstention as follows:

7 The concept of discretionary abstention involves a determination by the bankruptcy court as to  
8 whether or not issues raised in the pending state court action implicate bankruptcy principles  
which might have a material bearing on the debtor's reorganizational efforts.

9 In determining whether or not to exercise the §1334(c)(1) discretionary power of abstention  
10 'in the interest of comity with state courts or respect for state law,' it is important to recognize  
11 that Article III and Northern Pipeline considerations do not play any role with respect to that  
12 issue. The primary concern should be whether the federal bankruptcy objectives are properly  
13 served if the Bankruptcy Court conceded the constitutional jurisdiction to a state court, or  
whether factors of duplication of effort and delay may predominate as a consequence of  
abstention. In particular, it is important to analyze whether abstention could reasonably be  
considered to have the effect of impairing or delaying either the reorganization of a Chapter 11  
debtor or the administration of a Chapter 7 estate for the benefit of all parties in interest."

14 The adjudication of the Lawsuit does not have a material bearing on the Debtors'  
15 reorganizational efforts that have already achieved confirmation of a Chapter 11 Plan.

16 The State Court stands ready to adjudicate the state law claims in the Lawsuit thereby  
17 relieving this Court of the time and burden that would be involved in litigating the state law claims in  
18 the Bankruptcy Court.

19 **VIII. FACTUAL DISPUTES WITH RESPECT TO THE ISSUES IN THE LAWSUIT.**

20 The Debtors refer to this Court's Local Rules quoting Rule 3007-1(b) for its statement that  
21 "[w]here a factual dispute is involved, the initial hearing on an objection shall be deemed a status  
22 conference at which the Court will not receive evidence."

23 The Debtors state their contention that the "Proof of Claim fails as a matter of law" and also  
24 indicate that " ... allegations in the Proof of Claim can be resolved as a matter of law, following  
25 narrowly targeted discovery."

26 Accordingly, Claimant understands that Debtors do not seek any rulings at the Status



Conference other than the setting of a discovery schedule.

The Objection does not correctly describe the factual issues to be determined. Rather, the Objection argues that certain documents provide authority for PG&E to place huge transmission lines across Claimant's property but do so without any delineation of the location of any such lines.

Surveyor Michael S. Mahoney, whose declaration is submitted in support of this Response, explains that (a) the documents upon which Debtors rely do not contain the grant of rights that PG&E ascribes to them and (b) that PG&E has never prepared a customary and appropriate Record of Survey of its own to even attempt to demonstrate where any such easement might exist. At trial, Mr. Mahoney will explain the history of the area at the intersection of Highway 101 and 380, including the development of the airport and highways. Those facts, together with the extensive documents attached by the Debtors to the Declaration of Steven Lamb, will compel the conclusion that PG&E does not have any easements on the Property.

The facts to be determined at trial have no relationship to any matter relating to the Debtors' Chapter 11 case or any aspect of administration. The factual disputes relate to matters of title documents, surveys, and Records of Survey.

The nature of the factual disputes accentuates the appropriateness of the San Mateo County Superior Court conducting the trial of the Lawsuit.

## CONCLUSION

The Proof of Claim on file sufficiently apprises the Debtors of the nature of the claims and the relief sought.

The subject matter of the Proof of Claim was known in all its detail by the Debtors immediately before, and immediately after, the commencement of the Bankruptcy Cases by their participation in the Lawsuit.

The sufficiency of the Proof of Claim is bolstered by the actual knowledge of the Debtors and their state court counsel appearing on this Objection, by the presumption of validity, by the “exceedingly low threshold” of adequacy of pleadings, and by the authority to dismiss claims only if

1 no possible claim could ever be determined from a moving pleading.

2       The acceptance of “informal claims” as sufficient to satisfy the requirements for filing of  
3 Proofs of Claims likewise warrants denial of the Objection as the Lawsuit was not only known to the  
4 Debtors, but the Debtors filed pleadings regarding the Lawsuit during the claims filing period. The  
5 Lawsuit pleadings constitute an adequate Proof of Claim or the basis for the Court’s order allowing  
6 amendment of Claim No. 2090 to more specifically state the claims in the Lawsuit.

7       With respect to the manner of adjudicating the claims and defenses, there is no reason for this  
8 Bankruptcy Court to act as the trial court for state law claims. The State Court has assigned a single  
9 judge to hear all matters in the case and should be allowed to complete the proceedings.

10       Claimant also urges that since the trespass is a continuing invasion, the issues could be  
11 determined in a new action in the State Court. The duplication involved in that process is  
12 unnecessary as the issues can be determined in the action pending before Judge Fineman upon this  
13 Court’s abstention or grant of relief from stay.

14 Dated: June 28, 2022

COHEN AND JACOBSON, LLP

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By: /s/ Lawrence A. Jacobson  
Lawrence A. Jacobson  
Attorneys for Claimant and Respondent

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